

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No. 24162 of 2005

Between:

V.Srinivas Rao

..... PETITIONER

AND

The State, represented by the Deputy

Commissioner of Excise, Guntur,

Guntur District and another

.....RESPONDENTS

ORDER:

Seeking a Mandamus, declaring the action of the 1st respondent in Rc.No.292/97/A3, dated 31.08.2005, as illegal and arbitrary, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise.

At the admission stage of this writ petition, the learned Government Pleader for Prohibition and Excise has produced the entire record relating to the impugned proceedings dated 31.08.2005.

It is the case of the petitioner that pursuant to the orders of this Court in W.P.No.13558 of 2004, dated 09.09.2004, no show cause notice has been served on him, and without serving the show cause notice alleged to have been issued on 19.03.2005, final orders for confiscation of vehicle have been issued on 04.06.2005.

It is the case of the respondents that whatever address furnished by the petitioner, notices have been sent to the said address, but the postal authorities have returned the covers unserved as the address of the individual is not traced. The fact remains that the show cause notice is not at all been served on the petitioner.

I have perused the relevant record, produced by the learned Government Pleader. The vehicle, bearing Reg.No. AP 9U 3169 belongs to the brother of the petitioner, who was also an accused in Cr.No.229/96-97, dated 25.01.1997 for the offence punishable under Section 8(b) of A.P. Prohibition Act. The brother of the petitioner, who is A4 in the said case, was died on 05.10.1997. It is stated that the petitioner, being the legal heir of his brother, is entitled to own the said vehicle. It is stated that the interim custody of the vehicle was given in favour of brother of the petitioner by name V.V.Durgarao, subject to fulfillment of the conditions imposed. It is stated that as the said Durgarao died, the petitioner himself gave bank guarantee No.24/33 of Andhra Bank, Gunadala branch for a sum of Rs.28,000/- and also gave an

undertaking that he will not alienate or sell or encumber the said vehicle, and the said bank guarantee was extended from time to time. The entire record discloses that the petitioner has furnished his residential address as R/o.59-A-21/1-8/1, High School Road, Patamata, Vijayawada, Krishna District in W.P.No.13989/1998, whereas he has furnished his residential address in some other place in the original bank guarantee as 59-21/5-9, R.R.Gardens, Vijayawada-7. Notices were addressed to the first referred address, but not to the second referred address. In view of the discrepancies in furnishing two addresses, it appears that notices were sent to the first address and the fact remains that no notice was served on the petitioner, and therefore, confiscation proceedings have been passed without serving notice on the petitioner.

Having regard to the facts and circumstances of the case, as the confiscation proceedings have been passed without serving any notice on the petitioner, the confiscation proceedings of the 1st respondent, confiscating the vehicle bearing No.AP9U-3169 vide proceedings in Rc.No.292/97/A3, dated 04.06.2005, and the consequential impugned proceedings dated 31.08.2005, are set aside, and remand the matter to the 1st respondent with a direction to dispose of the same afresh after hearing the petitioner. The petitioner shall furnish his present correct address and shall appear before the 1st respondent on 30.11.2005, and there upon, it is for the 1st respondent to pass appropriate final orders, in accordance with law.

With the above observations, the Writ Petition is allowed. No order as to costs.

V.ESWARAIAH,J

Dated: 17.11.2005

Dsr